



**COUNTY ATTORNEY'S OFFICE
MEMORANDUM**

TO: Board of County Commissioners

THROUGH: Stephen P. Lee, Deputy County Attorney *[Signature]*

FROM: Lynn Vouis, Assistant County Attorney *[Signature]*

CONCUR: Pam Hastings, Administrative Manager/Public Works Department *[Signature]*
Kathleen Myer, Principal Engineer/Major Projects *[Signature]*

DATE: September 15, 2004

SUBJECT: Purchase Agreement Authorization
Owners: James M. and Anne J. Gillespie
Parcel Nos. 118/718
Lake Drive Road Improvement Project

This memorandum requests authorization by the Board of County Commissioners (BCC) and execution by the Chairman of a purchase agreement for Parcel Nos. 118/718. The parcels are required for the Lake Drive road improvement project. The purchase price is \$45,000.00, inclusive of attorney fees and costs incurred by the property owners.

I THE PROPERTY

A. Location Data

The property is located on the north side of Lake Drive approximately 2,800 feet west of Tuskawilla Road, within unincorporated Seminole County, Florida.

1. Location Map (Exhibit A);
2. Sketch (Exhibit B); and
3. Purchase Agreement (Exhibit C)

B. Address

4722 E. Lake Drive
Winter Springs, Florida 32708

C. Description

The parent tract contains 98,141± square feet of gross land area and approximately 76,796 square feet of net land area. The property is improved with a 6,832 square feet single family residence built in 1997.

II AUTHORITY TO ACQUIRE

The BCC adopted Resolution No. 2002-R-70 on April 23, 2002, and Third Supplemental and Third Amended Resolution No. 2004-R-75 on April 3, 2004, authorizing the acquisition of the referenced property, and finding that the construction of the Lake Drive road improvement project is necessary and serves a county and public purpose and is in the best interests of the citizens of Seminole County.

III ACQUISITION/REMAINDER

The proposed acquisition is 2,159 square feet. The remainder is 95,982 square feet of gross land area and approximately 74,637 square feet of net land area. The temporary construction easement is 532 square feet and is for the purpose of reconnecting the entrance to the new right-of-way.

IV APPRAISED VALUE

The County's appraised value amount is \$27,200.00. The County's appraisal was prepared by Clayton, Roper & Marshall, P.A., and was approved by the County's MAI designated staff appraiser.

V BINDING OFFER/NEGOTIATIONS

On June 8, 2004, the BCC authorized a binding written offer in the amount of \$35,000.00. The property owners, through their attorneys, countered at \$45,000.00. They also insisted on a circular driveway to be constructed by the County. Thereafter, County staff negotiated this proposed settlement agreement with the owners and their attorney in the amount of \$45,000.00 inclusive of attorney's fees and costs, and with a curb cut for the owners to construct their own driveway.

VI SETTLEMENT ANALYSIS/COST AVOIDANCE

The main justification for this proposed settlement is the avoidance of future litigation costs. The difference between the binding written offer amount of \$35,000.00 and the owners' settlement offer of \$45,000.00 is \$10,000.00. If the County does not accept the owners' counteroffer, the owners' attorney will employ an appraiser to evaluate the impact of the acquisition on the remainder property. Typical appraisal and planner fees approved by the Courts in similar

cases have approached \$10,000.00, even based on relatively early case settlement. If the owners decide to force the County to acquire the property through an Order of Taking hearing, the expert fees will increase. The County will also have to pay the costs of litigation-filing fees, publication, service of process, etc. Even if the County decides to proceed to a jury trial and prevails, the costs expended by the County to reach that point would far exceed the \$10,000.00 demanded by the property owners. In a case like this, with limited expert involvement, it simply makes sense to settle early and pay the additional amount to the property owners directly.

VII RECOMMENDATION

County staff recommends that the BCC authorize settlement in the amount of \$45,000.00, inclusive of attorney's fees and costs incurred.

LV/kc

Attachments:

Location Map (Exhibit A)

Sketch (Exhibit B)

Purchase Agreement (Exhibit C)

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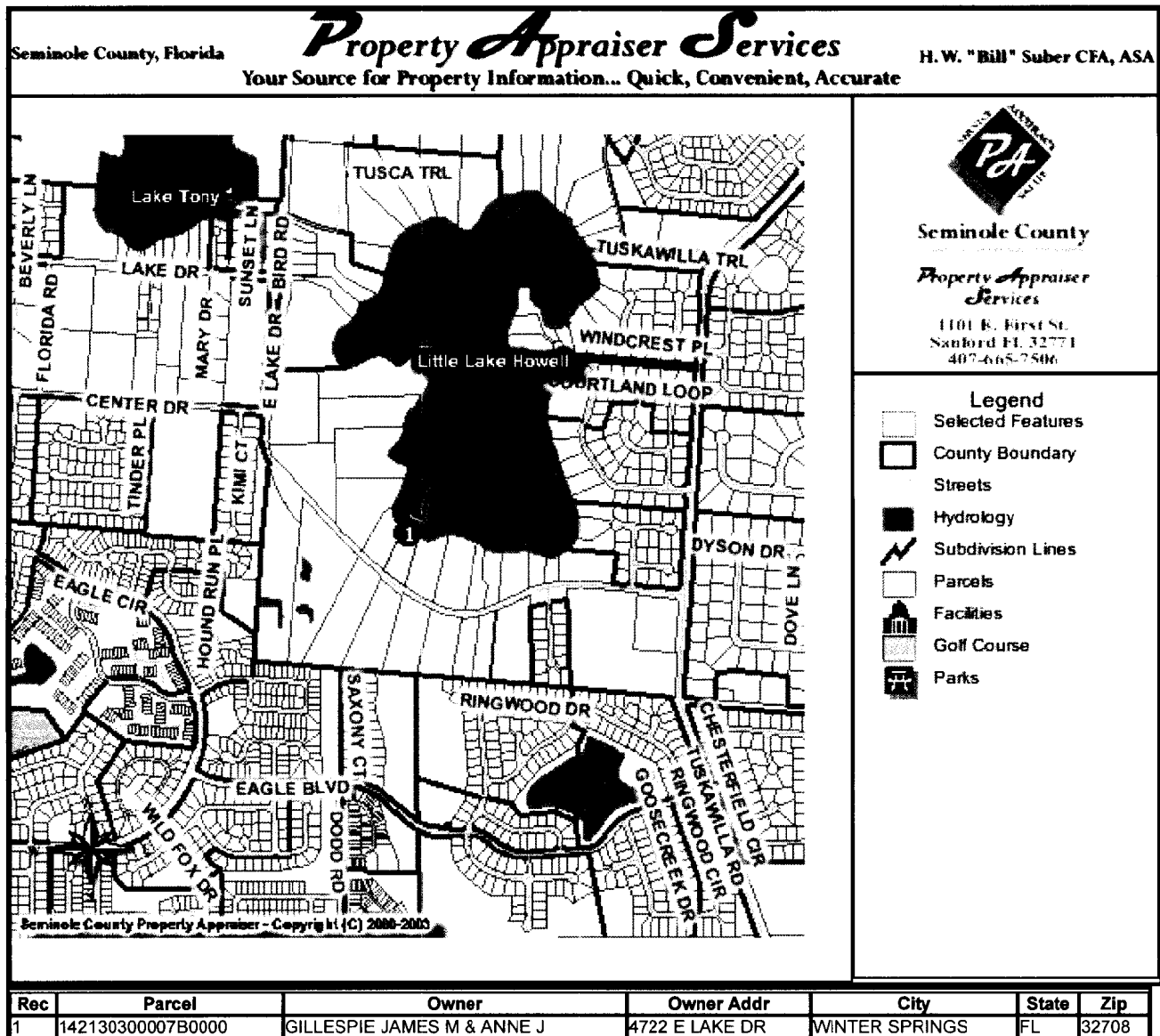
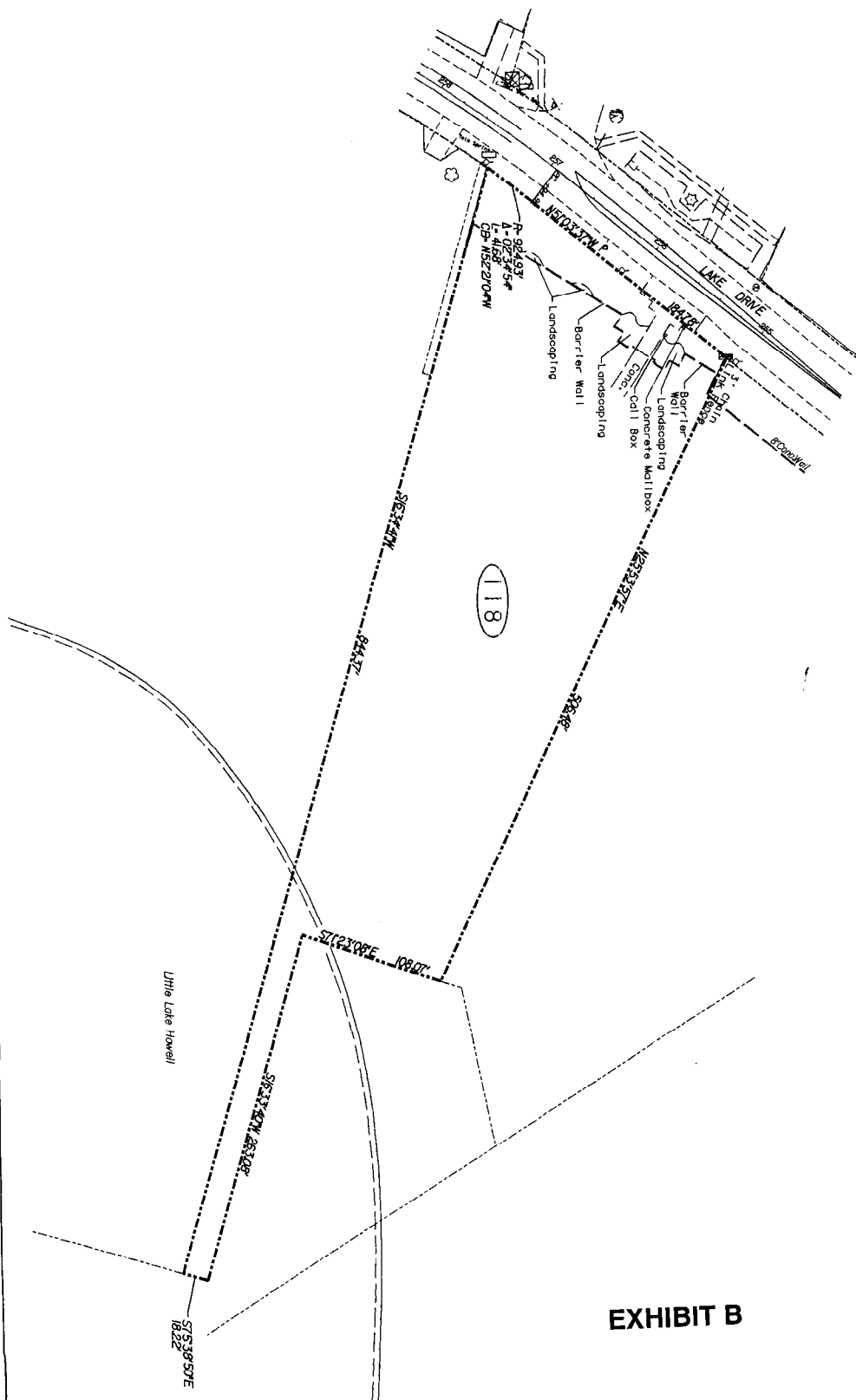


EXHIBIT A



GRAPHIC SCALE - FEET

EXHIBIT B

**PURCHASE AGREEMENT
FEE SIMPLE/TEMPORARY CONSTRUCTION EASEMENT**

STATE OF FLORIDA)
COUNTY OF SEMINOLE)

THIS AGREEMENT is made and entered into this ____ day of _____, 2004, by and between JAMES M. GILLESPIE and ANNE J. GILLESPIE, whose address is 4722 East Lake Drive, Winter Springs, Florida 32708, hereinafter referred to as "OWNER," and SEMINOLE COUNTY, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as "COUNTY."

WITNESSETH:

WHEREAS, the COUNTY requires the hereinafter described property for construction and maintenance of an authorized road project in Seminole County;

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained OWNER hereby agrees to sell and convey, and COUNTY hereby agrees to purchase the following property upon the following terms and conditions:

I. LEGAL DESCRIPTION -

RIGHT-OF-WAY FEE SIMPLE

PROJECT: Lake Drive

OWNER: James M. Gillespie and Anne J. Gillespie, Husband and Wife

R/W PARCEL NO.: 118

A part of that parcel of land described in Official Record Book 3009, page 1627 as recorded in the Public Records of Seminole County, Florida being that portion of Section 14, Township 21 South, Range 30 East of Seminole County, Florida,

described as follows:

Commence at the Northwest corner of Government Lot 4, Section 13, Township 21 South, Range 30 East, said corner being the intersection of the West line of said Section 13 and the Southerly Grant line of the Philip R. Young Grant; thence N84°55'54"W along said Southerly Grant line a distance of 967.22 feet; thence N84°55'33"W a distance of 337.56 feet to the Southwest corner of that parcel of land described in Official Record Book 2331, page 575, Public Records of Seminole County, Florida; thence departing said Southerly Grant line N16°34'41"E a distance of 752.66 feet to Southwest corner of that parcel of land described in Official

Record Book 2893, page 1588 and to the Right of Way line of Lake Drive as recorded in Deed Book 196, page 327, Public Records of Seminole County, Florida, for a Point of Beginning, said point being on a non-tangent curve concave Northeasterly, having a radius of 924.93 feet; thence, from a chord bearing of N52°21'04"W, run along said curve an arc length of 41.68 feet through a central angle of 02°34'54" to a Point of Tangency; thence N51°03'37"W along said Right of Way line a distance of 147.84 feet; thence, departing said Right of Way line, run S58°17'00"E a distance of 181.93 feet to a point on the West line of that parcel of land described in Official Record Book 2893, page 1588, Public Records of Seminole County, Florida; thence S16°34'41"W along said West parcel line a distance of 23.72 feet to the Point of Beginning.

Containing 2,159 square feet, more or less.

PARCEL I.D. NO.: 14-21-30-300-007B-0000

TEMPORARY CONSTRUCTION EASEMENT

PROJECT: Lake Drive

OWNER: James M. Gillespie and Anne J. Gillespie, Husband and Wife

TEMPORARY CONSTRUCTION EASEMENT NO.: 718

A part of that parcel of land described in Official Record Book 3009, page 1627 as recorded in the Public Records of Seminole County, Florida being that portion of Section 14, Township 21 South, Range 30 East of Seminole County, Florida,

described as follows:

Commence at the Northwest corner of Government Lot 4, Section 13, Township 21 South, Range 30 East, said corner being the intersection of the West line of said Section 13 and the Southerly Grant line of the Philip R. Young Grant; thence N84°55'48"W along said Southerly Grant line a distance of 967.22 feet; thence N84°55'33"W a distance of 337.56 feet to the Southwest corner of that parcel of land described in Official Record Book 2331, page 575, Public Records of Seminole County, Florida; thence departing said Southerly Grant line N16°34'41"E a distance of 752.66 feet to Southwest corner of that parcel of land described in Official Record Book 2893, page 1588 and to the Right of Way line of Lake Drive as recorded in Deed Book 196, page 327, Public Records of Seminole County, Florida, said point being on a non-tangent curve concave Northeasterly, having a radius of 924.93 feet; thence, from a chord bearing of N52°21'04"W, run along said

curve an arc length of 41.68 feet through a central angle of 02°34'54" to a Point of Tangency; thence N51°03'37"W along said Right of Way line a distance of 147.84 feet for a Point of Beginning; thence continue along said Right of Way line N51°03'37"W, a distance of 1.30 feet; thence departing said Right of Way line, run N31°43'00"E, a distance of 13.84 feet; thence run S58°17'00"E, a distance of 38.00 feet; thence run S31°43'00"W, a distance of 14.00 feet; thence run N58°17'00"W, a distance of 36.71 feet; to the Point of Beginning.

Containing 532 square feet, more or less.

PARCEL I.D. NO.: 14-21-30-300-007B-0000

II. PURCHASE PRICE

(a) OWNER agrees to sell and convey the above-described property of the above referenced project by Warranty Deed on Parcel No. 118, free of liens and encumbrances, and by Temporary Construction Easement on Parcel No. 718 unto COUNTY for the sum of FORTY-FIVE THOUSAND AND NO/100 DOLLARS (\$45,000.00). The above amount includes all compensation due as a result of this acquisition to the OWNER for any reason and for any account whatsoever. OWNER agrees to execute a Temporary Construction Easement for a period of five (5) years from date of commencement of construction on Parcel No. 718.

(b) COUNTY shall only be responsible for the following closing costs: recording fees for Warranty Deed and Title Insurance Policy issued to the COUNTY by a title insurance company of the COUNTY's choice.

(c) OWNER shall be responsible for OWNER's own attorney's fees, all costs to prepare and all expenses to record instruments necessary to provide title unto COUNTY, free and clear of all liens and encumbrances, and the OWNER's share of the pro-rata property taxes outstanding, up to and including the date of closing. The before mentioned closing costs and pro-rata real estate taxes shall be withheld by the COUNTY's closing agent from the proceeds of this sale and paid to the proper authority on behalf of the OWNER.

(d) OWNER covenants that there are no real estate commissions due any licensed real estate broker and further agrees to defend against and pay any valid claims made in regard to this purchase relating to covenants made herein by the OWNER.

III. CONDITIONS

(a) COUNTY shall pay to the OWNER the sum as described in Item II. above, upon the proper execution and delivery of all the instruments required to complete the above purchase and sale to the COUNTY's designated closing agent. The OWNER

agrees to close within seven (7) days of notice by the COUNTY's closing agent that a closing is ready to occur.

(b) OWNER agrees to vacate and surrender possession of the property upon the date of delivery of the instruments and closing on this purchase. COUNTY may, but is not obligated to, extend possession of the property by OWNER; provided, however, that such approval will be evidenced by a written document of equal dignity herewith. During the period from the date of the execution of this Agreement by both parties and the closing, OWNER agrees to exercise diligent care in protecting the property from theft and vandalism. All windows, doors, bathroom fixtures, electrical outlets, heaters and other similar items included in the purchase price, as well as the land itself, shall be preserved in the normal conditions and turned over to the COUNTY by the OWNER, intact, if applicable.

(c) Any and all encroachments existing upon the property other than those improvements included in the purchase price are to be removed at the expense of the OWNER prior to closing.

(d) OWNER warrants that there are no facts known to OWNER materially affecting the value of the properties which are not readily observable by COUNTY or which have not been disclosed to COUNTY.

(e) The instrument(s) of conveyance to be utilized at closing shall, in addition to containing all other common law covenants through the use of a warranty deed, also include the covenant of further assurances.

(f) The OWNER shall fully comply with *Section 286.23, Florida Statutes*, to the extent that said statute is applicable.

(g) In the event that COUNTY subsequently abandons this project after execution of this Agreement, but before closing, this Agreement shall be null and void.

(h) In the event that difficulties arise as to clearing title sufficient to consummate a closing of this Purchase Agreement or difficulties occur in the issuance of a title insurance commitment which is acceptable to the COUNTY; this Agreement shall survive the filing of any eminent domain action by the COUNTY and shall serve as a joint stipulation regarding all valuation issues and fees and costs matters in any condemnation proceeding initiated by the COUNTY relating to the real property herein described. The OWNER agrees that, in accordance with any request made by the COUNTY, the OWNER shall execute any and all instruments, pleadings, documents and agreements upon litigation reflecting the full settlement as set forth herein. The OWNER agrees not to oppose the COUNTY's condemnation proceedings in any way. The OWNER, may however, assert OWNER's rights against other claimants in apportionment proceedings.

(i) As part of the consideration for this Purchase Agreement, OWNER hereby grants to COUNTY, its employees, agents, consulting engineers, contractors and other

representatives the right to enter upon and to have exclusive possession of the property described in paragraph 1 of this Agreement. The right of entry shall commence ninety (90) days after the execution of this Agreement by COUNTY, and shall continue until closing occurs, or if closing cannot occur, until the condemnation proceedings to acquire the property have been completed. Aside from this Agreement, no further notification of COUNTY's intent to enter the property is required. This right of entry is for the purpose of construction of the Lake Drive road improvement project and so that the COUNTY's construction schedule can be maintained notwithstanding issues which may delay closing in a timely manner. OWNER will not receive from COUNTY any additional compensation beyond that set forth in this Purchase Agreement during the period of time the COUNTY occupies the above described property for the purpose set forth above for the right to enter and possess the property before conveyance of title.

(j) The OWNER shall indemnify and save the COUNTY harmless from and against all liability, claims for damages, and suits for any injury to any person or persons, or damages to any property of any kind whatsoever arising out of or in any way connected with this Agreement or in any act or omission in any manner related to said Agreement.

(k) The COUNTY shall be solely responsible for all of COUNTY activities conducted on the property. OWNER shall not be considered an agent or employee of COUNTY for any reason whatsoever on account of the Agreement.

(l) The OWNER states that the OWNER has not engaged in any action that would create a conflict of interest in the performance of OWNER's obligations under this Agreement with the COUNTY which would violate or cause others to violate the provisions of *Part III, Chapter 112, Florida Statutes*, relating to ethics in government.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective name on the date first above written.

WITNESSES:

SIGNATURE

C. A. BELL
PRINT NAME

SIGNATURE

Jacqueline B. BELL
PRINT NAME


PROPERTY OWNER:

JAMES M. GILLESPIE

ADDRESS: 4722 East Lake Drive
Winter Springs, FL 32708

Road Project Lake Drive:
Parcel No(s): 118/718
Owner(s) Name: James M. Gillespie &
Anne J. Gillespie

WITNESSES:


SIGNATURE

Jacqueline B. BELL

PRINT NAME


SIGNATURE

C. BELL

PRINT NAME

PROPERTY OWNER:


ANNE J. GILLESPIE

ADDRESS: 4722 East Lake Drive
Winter Springs, FL 32708

ATTEST:

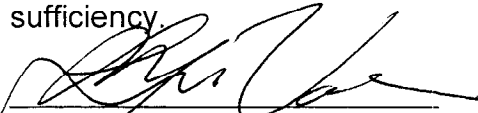
**BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA**

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: _____
DARYL G. McLAIN, Chairman

Date: _____

For the use and reliance of
Seminole County only. Ap-
proved as to form and legal
sufficiency.


County Attorney

As authorized for execution by the Board
of County Commissioners at its _____,
2004, regular meeting.

LV/sb

09/15/04

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